

HUD MULTIFAMILY AND HEALTHCARE LOAN SALE 2004-2 CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “Agreement”) is made and agreed to by the person designated as the Reviewer on the signature page hereof (the “Reviewer”).

Preamble

The U.S. Department of Housing and Urban Development (“HUD”) is offering for sale certain HUD-held mortgage loans secured by multifamily properties or healthcare facilities (the “Mortgage Loans”). In connection with the sale, HUD has determined to permit the Reviewer to review and inspect certain documents, databases containing imaged documents, data (including computerized data on tape or other media) and other information relating to the Mortgage Loans and may provide the Reviewer with a password in order to allow the Reviewer password protected access to any or all of the foregoing (all or any portion of the foregoing, including any password provided to the Reviewer, referred to herein as the “Confidential Information”) on the condition that the Reviewer execute and deliver this Agreement.

In consideration of being granted the opportunity to review and inspect the Confidential Information, the Reviewer agrees as follows:

Agreement

Section 1. Purpose. The Reviewer agrees that its review, inspection and use of the Confidential Information shall be solely to conduct due diligence, on its own behalf and not as an agent, representative or broker of any undisclosed party, for one or more of the following purposes: (i) determining whether or not to submit a bid to purchase one or more of the Mortgage Loans; (ii) determining whether or not to provide financing with respect to the purchase of one or more of the Mortgage Loans; or (iii) determining whether or not to provide insurance or other credit enhancement with respect to one or more of the Mortgage Loans or with respect to any securities or participation certificates backed by or representing an interest in one or more of the Mortgage Loans.

Section 2. Non-Disclosure and Use of Confidential Information. The Reviewer agrees that, except as set forth below, all Confidential Information shall be used by the Reviewer solely for one or more of the purposes stated in Section 1 of this Agreement. The Reviewer further agrees that it shall not, without the prior written consent of HUD, disclose any of the Confidential Information, or any notes, summaries or other information prepared by or on behalf of the Reviewer using the Confidential Information (the “Related Information”), to any party other than to (i) the Reviewer’s employees, officers and directors (including those of affiliates), (ii) the Reviewer’s agents and representatives, including attorneys, accountants and financial advisors, (iii) prospective providers of financing, (iv) insurance firms, (v) credit rating agencies and (vi)

prospective purchasers of any Mortgage Loans (or interests therein) to be purchased by the Reviewer from HUD (collectively, the “Representatives”). No Representative shall be permitted to review or use any of the Confidential Information or the Related Information unless such Representative: (I) has a need to review or use the Confidential Information and/or the Related Information for one or more of the purposes stated in Section 1 hereof, and (II) has entered into an agreement with the Reviewer substantially in the form of this Agreement or is otherwise bound to review and use the Confidential Information subject to and only in accordance with the terms of this Agreement. In addition, the Reviewer acknowledges and agrees as follows:

(a) The term “Confidential Information” shall not include information which (i) is already available to the general public other than as a result of disclosure by the Reviewer or any of the Representatives, and which information is not subject to any confidentiality obligations to HUD; or (ii) is required to be disclosed by law or by regulatory or judicial process, provided that the Reviewer has provided HUD with reasonable notice so as to allow HUD an opportunity to seek a protective order in advance of such disclosure.

(b) The Reviewer shall defend, indemnify and hold harmless HUD, its employees, representatives, agents and contractors (“Indemnified Parties”), from and against any and all claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorney’s fees) asserted against or incurred by any Indemnified Party as a result of the breach of any of the terms or conditions of this Agreement by the Reviewer or any other person or entity to whom the Reviewer has disclosed the Confidential Information and/or the Related Information. In addition, if HUD determines that the Reviewer (or any other such person or entity) has breached any of the terms or conditions of this Agreement, HUD may refuse to accept any bids made by or on behalf of the Reviewer.

(c) The rights, powers and remedies provided for in the preceding subsection 2(b) shall be in addition to and do not preclude the exercise of any other right, power or remedy available to HUD under law or in equity. No forbearance, failure or delay in exercising any such right, power or remedy shall operate as a waiver thereof or preclude its further exercise.

(d) Any unauthorized use of the Confidential Information and/or the Related Information may result in the imposition of criminal penalties under 18 U.S.C. § 641.

Section 3. Duplication. The Reviewer shall not, without the prior written consent of HUD, make any reproductions of the Confidential Information or the Related Information for any person other than a Representative.

Section 4. Limited Access. The Reviewer shall inform each of its Representatives that receives any of the Confidential Information and/or the Related Information of the requirements of this Agreement and shall require each such Representative to comply with such requirements.

Section 5. Termination. The restrictions in this Agreement shall terminate as to any Mortgage Loan if the Reviewer acquires such Mortgage Loan or if the Reviewer provides, directly or indirectly, financing, insurance, or other credit enhancement with respect to such Mortgage Loan; provided, however, that any claim by HUD based on a breach of this Agreement occurring prior to such acquisition or provision of financing, insurance or other credit enhancement shall survive the acquisition or provision of financing, insurance or other credit enhancement unless waived by HUD in writing. The terms and conditions of this Agreement shall remain in full force and effect with respect to any Mortgage Loan that the Reviewer does not acquire or with respect to any Mortgage Loan for which the Reviewer does not provide financing, insurance or other credit enhancement. The Reviewer shall promptly destroy any Confidential Information or Related Information relating to the Mortgage Loans that the Reviewer does not acquire or for which the Reviewer does not provide financing, insurance or other credit enhancement.

Section 6. Release of HUD. Reviewer acknowledges and understands that some or all of the Confidential Information may have been prepared by parties other than HUD, that HUD has not independently verified the Confidential Information, and that, except as may be contained in any loan sale agreement executed by HUD and a bidder in connection with the sale of some or all of the Mortgage Loans, neither HUD, its employees, representatives, agents or contractors nor any other entity which provides or makes available Confidential Information to Reviewer at the direction of HUD, makes any representation or warranty whatsoever, whether express, implied or by operation of law, with respect to the content, completeness or accuracy of the Confidential Information. Reviewer hereby releases HUD and its employees, representatives, agents and contractors, including the preparers of any of the Confidential Information, from all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorneys' fees) asserted against or incurred by Reviewer by reason of Reviewer's reliance on or knowledge of the Confidential Information or for any other reason. Notwithstanding Section 5, this section shall survive the termination of this Agreement.

Section 7. Entire Agreement. This Agreement represents the entire agreement between the Reviewer and HUD relating to the treatment of the Confidential Information and the Related Information heretofore or hereafter reviewed or inspected by the Reviewer. This Agreement supersedes all other negotiations and agreements relating to such matters.

IN WITNESS WHEREOF, a duly authorized representative of the Reviewer has executed this Agreement as of the date set forth below.

REVIEWER:

(Name of Reviewer)

By: _____

Printed Name: _____

Title: _____

Company Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail Address: _____

Date of Execution: _____